

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RASHOD D. COSTON,	:
Plaintiff	:
v.	: Case No. 3:15-cv-13-KRG-KAP
MARK KIRBY, WARDEN, F.C.I.	:
LORETTO,	:
Defendant	:

Summary Report and Recommendation

What was docketed at docket no. 5 as plaintiff Coston's motion to vacate should be denied.

In January Coston filed an inadequate complaint with an inadequate motion to proceed *in forma pauperis*; I denied the motion and screened the complaint, explaining what steps Coston had to take. Coston did not pay the filing fee, or submit an up to date *in forma pauperis* motion, or file objections, or amend his complaint. The Court dismissed the complaint on February 4, 2015.

On March 20, 2015, the Clerk received correspondence that Coston also sent to the Court of Appeals that could be construed as a motion or notice of appeal, and has been docketed as both. The motion is dated March 6, 2015, and both copies were sent Priority Overnight mail by Federal Express in envelopes dated March 19, 2015. The motion represents that Coston never received my Report and Recommendation and that the complaint is adequate.


The motion should be denied. The discrepancy between the date of the motion and the date of the envelopes suggests that Coston falsely dated the motion to keep it within the periods prescribed by Fed.R.Civ.P. 59 for a motion to reconsider or by

Fed.R.App.P. 4(a)(1)(A) for a notice of appeal. Since Coston received the Order dismissing his complaint that was sent to the same address he supplied I am also skeptical of his claim never to have received the Report and Recommendation. But if Coston would read the Order dismissing his complaint, he would notice that it was a dismissal without prejudice for failure to prosecute. Without prejudice means he is free to start again. There is no point to a motion to reconsider or to vacate, or a notice of appeal. If Coston wants to spend \$505 to appeal an order that tells him to correct the mistakes in his complaint he is free to do so. If Coston pays the filing fee or files an adequate motion to proceed *in forma pauperis*, and submits an amended complaint, the Clerk will docket them.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have fourteen days to serve and file written objections to this Report and Recommendation.

DATE: \_\_\_\_\_

2 April 2015

  
\_\_\_\_\_  
Keith A. Pesto,  
United States Magistrate Judge

Notice by U.S. Mail to:

Rashod D. Coston  
Apartment 5C  
233 W. 140th Street  
New York, NY 10030